

Message Text

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INFO OCT-01 ISO-00 CIAE-00 DODE-00 INR-10 NSAE-00

PA-01 ICA-11 SP-02 /037 W

-----062411 101853Z /64

R 101535Z MAY 78

FM AMCONSUL STUTTGART

TO SECSTATE WASHDC 4313

AMEMBASSY BONN

INFO USMISSION USBERLIN

AMCONSUL BREMEN

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E.O. 11652: N/A

TAGS: PINS GW

SUBJECT: FILBINGER LAWSUIT

1. SUMMARY: STUTTGART DISTRICT COURT MAY 9 HELD FIRST HEARING IN LAWSUIT BROUGHT BY BADEN-WUERTTEMBERG MINISTER-PRESIDENT FILBINGER AGAINST PUBLICATION OF ARTICLE AND EVENTUAL BOOK CONCERNING HIS ACTIONS AS MILITARY JUDGE AT END OF WW II. CASE HAS GAINED NATIONAL PUBLICITY. EVEN IF FILBINGER WINS HIS CASE (VERDICT EXPECTED IN MID-JUNE), HIS IMAGE IS LIKELY TO REMAIN SOMEWHAT TARNISHED. END SUMMARY.

2. ORAL ARGUMENTS WERE HEARD MAY 9 IN THE DISTRICT COURT

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(LANDESGERICHT) OF STUTTGART IN A SUIT BROUGHT BY BADEN-WUERTTEMBERG MINISTER-PRESIDENT HANS FILBINGER AGAINST AUTHOR ROLF HOCHHUT FOR ALLEGEDLY SLANDEROUS REMARKS. THE CHARGES STEM FROM THE PRINTING BY DIE ZEIT LAST FEBRUARY OF AN EXCERPT FROM A STILL UNPUBLISHED BOOK WRITTEN BY HOCHHUT, AND THE WHOLE BUSINESS IS THE SUBJECT OF A LENGTHY ARTICLE IN THE LATEST ISSUE OF DER SPIEGEL.

3. HOCHHUT UNEARTHED AN INCIDENT DATING FROM JANUARY 1945 WHEN FILBINGER, THEN JUDGE ADVOCATE OF THE GERMAN NAVY, SOUGHT AND OBTAINED THE DEATH PENALTY AGAINST A DESERTER AND WAS A WITNESS AT HIS EXECUTION. PREVIOUSLY THE DESERTER HAD BEEN GIVEN ONLY A VERY LIGHT SENTENCE ON THE SAME CHARGE BUT THE VERDICT WAS OVERTURNED. HOCHHUT ALSO CLAIMED THAT FILBINGER HAD CONTINUED TO ADMINISTER NAZI JUSTICE EVEN WHEN A BRITISH PRISONER, TO THE POINT OF HAVING A SOLDIER CONFINED FOR SIX MONTHS FOR INSUBORDINATION.

4. AT THE MAY 9 HEARING (FILBINGER PERSONALLY DID NOT APPEAR), THE PRESIDING JUDGE SEEMED INCLINED TO GIVE FILBINGER'S CASE SOME SATISFACTION WHEN HE EXPRESSED THE OPINION THAT IT WAS INADMISSIBLE FOR HOCHHUT TO CLAIM THAT THE ABOVE FACTS HAD BEEN KEPT SECRET UNTIL NOW BY A CONSPIRACY OF SILENCE MOUNTED BY THOSE CLOSE TO FILBINGER. ON THE OTHER HAND, THE JUDGE EXPRESSED THE VIEW THAT IN CALLING FILBINGER A "TERRIBLE JUDGE" OR CLAIMING THAT HE HAD STILL ENFORCED NAZI JUSTICE WHILE A BRITISH PRISONER HOCHHUT HAD NOT OVERSTEPPED THE BOUNDS OF PERMISSIBLE STATEMENT OF DIFFERING OPINION. FILBINGER'S LAWYER AND THE LAWYER FOR THE DEFENSE, ACCORDING TO PRESS ACCOUNTS, APPEAR TO HAVE ADDRESSED THE THRUST OF THEIR ARGUMENTS TO THE QUESTION OF WHETHER OR NOT FILBINGER HAD LATITUDE TO DEMAND ANYTHING LESS THAN THE DEATH PENALTY FOR DESERTION IN THE JANUARY 1945 TRIAL.

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5. THE COURT ANNOUNCED AT THE CLOSE OF THE MAY 9 HEARING THAT IT WOULD PRONOUNCE ON MAY 23 WHETHER A TEMPORARY INJUNCTION WOULD BE GRANTED AND WOULD HAND DOWN ITS FINAL DECISION ON JUNE 13.

6. AS CONCERNS FILBINGER'S ROLE WHILE A BRITISH PRISONER, THE BRITISH CONSUL GENERAL TELLS US THAT IT WAS THE PRACTICE OF THE BRITISH MILITARY TO DELEGATE DIRECT RESPONSIBILITY FOR ENFORCING ORDER AND DISCIPLINE WITHIN A POW CAMP TO ONE OR MORE OF THE SENIOR OFFICERS AMONG THE PRISONERS.

7. THE PRESS REPORTS ONE OF THE DEFENSE LAWYERS AS SAYING (THOUGH WHETHER INSIDE OR OUTSIDE THE COURTROOM IS NOT CLEAR) THAT THE FACTS BROUGHT OUT BY HOCHHUT RAISE THE QUESTION OF WHETHER FILBINGER IS FIT TO SERVE AS A MINISTER-PRESIDENT. THE SPD IN BADEN-WUERTTEMBERG HAS OF COURSE BEEN QUICK TO JOIN IN THE CRITICISM OF FILBINGER FOR THESE ALLEGED ACTIONS IN HIS PAST, BUT SPD LAND CHAIRMAN EPPLER HAS TOLD THE PRESS THAT THE SPD IS NOT, HOWEVER, DEMANDING FILBINGER'S RESIGNATION.

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8. COMMENT: AS WITH ANY SUIT FOR SLANDER, FILBINGER PRESUMABLY HAD TO WEIGH WHETHER IT WAS BETTER TO LET THE DIE ZEIT ARTICLE AND HOCHHUT'S FORTHCOMING BOOK STAND AND SIMPLY BRUSH ASIDE THE CHARGES OR TO PRESS SUIT AND INVITE THE MORE GLARING PUBLICITY THAT HAS INEVITABLY FOLLOWED. A LOCAL LAWYER AND STAUNCH CDU SUPPORTER HAS EXPRESSED TO US THE OPINION THAT FILBINGER HAD NO OTHER RECOURSE THAN TO FILE SUIT IN VIEW OF THE VERY PIOUS ATTITUDE THAT HAS BEEN FILBINGER'S IN THE PAST TO THE EFFECT THAT HE WAS ENTIRELY UNTAINTED BY THE NAZI REGIME. (THE DER SPIEGEL ARTICLE NOTES THAT FILBINGER HAS PUBLICLY CLAIMED TO HAVE OPPOSED NAZISM AS EARLY AS THE MID-THIRTIES.) "IF THE PURE WHITE SHIRT IS NOW DISCOVERED TO HAVE A SPOT ON IT," SAID OUR SOURCE, "INEVITABLY PEOPLE WILL BEGIN TO WONDER WHAT LIMITED OFFICIAL USE

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OTHER SPOTS MIGHT SHOW UP IF THEY LOOK A LITTLE HARDER." (THE STUTTGARTER ZEITUNG ON MAY 10 PUBLISHES A FRONT PAGE "CARTOON"

CONSISTING OF A LARGE BLANK SPACE CAPTIONED "FILBINGER'S WHITE SHIRT".) FILBINGER'S PROFESSED OPPOSITION TO THE DEATH PENALTY ON RELIGIOUS GROUNDS TODAY MAY ALSO SOUND A LITTLE HOLLOW TO PUBLIC OPINION IN VIEW OF WHAT HAS NOW COME TO LIGHT REGARDING HIS ROLE IN SECURING THE DEATH PENALTY IN THE 1945 TRIAL. EVEN IF FILBINGER WINS HIS LAWSUIT, SOME DAMAGE WILL CERTAINLY HAVE BEEN DONE TO HIS IMAGE; THE SHIRT MAY NEVER BE ENTIRELY WHITE AGAIN BUT ONLY A TATTLETALE GREY. FOR FILBINGER, WHO LOOKS FORWARD NOT ONLY TO RE-ELECTION IN 1980 AS MINISTER-PRESIDENT BUT, AS DER SPIEGEL NOTES, IS ALSO SAID TO HAVE SOME ASPIRATIONS FOR THE FEDERAL PRESIDENCY, WHAT IS GOING ON BEFORE THE SEVENTEENTH CIVIL CHAMBER OF THE STUTTGART DISTRICT COURT COULD HAVE VERY FAR-REACHING IMPLICATIONS INDEED. MILLER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LITIGATION, PRESS COMMENTS, COURT PROCEEDINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 10 may 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STUTT00905
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780198-1186
Format: TEL
From: STUTTGART
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780572/aaaacjbs.tel
Line Count: 183
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: ba3430a1-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 01 jun 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2730587
Secure: OPEN
Status: NATIVE
Subject: FILBINGER LAWSUIT
TAGS: PINS, GE, (FILBINGER, HANS)
To: STATE BONN
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/ba3430a1-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014